

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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STEVEN BRAUNSTEIN, DESHON
HEREFORD.

Case No. 2:18-cv-01767-RFB-NJK

ORDER

Plaintiffs,

V.

STATE OF NEVADA, *et al.*,

Defendants.

13 Before the Court is Plaintiffs' Motion to Proceed In Forma Pauperis and the Proposed
14 Complaint. ECF Nos. 1, 1-1. Plaintiffs seek injunctive relief under 42 U.S.C. § 1983, alleging
15 their constitutional rights were violated when the juries in their respective criminal cases were not
16 sworn in by the state judges. ECF No. 1-1. However, "habeas [corpus relief] is the exclusive
17 vehicle for claims brought by state prisoners that fall within the core of habeas, and such claims
18 may not be brought in a § 1983 action." Nettles v. Grounds, 830 F.3d 922, 927 (9th Cir. 2016),
19 cert. denied 137 S. Ct. 645 (2017) (citing Wilkinson v. Dotson, 544 U.S. 74, 81–82 (2005)). Thus,
20 a "state prisoner's § 1983 action is barred (absent prior invalidation)—no matter the relief sought
21 (damages or equitable relief), no matter the target of the prisoner's suit (state conduct leading to
22 conviction or internal prison proceedings)—*if* success in that action would necessarily demonstrate
23 the invalidity of confinement or its duration." Wilkinson, 544 U.S. at 81–82 (citations omitted).

24 The Court finds that Plaintiffs' claims are a direct attack on the validity of their criminal
25 convictions and sentences. A habeas petition and not a Section 1983 claim is the proper way to
26 challenge a conviction or sentence. Indeed, Plaintiffs previous filed habeas petitions, seeking
27 habeas relief for the same alleged violations. Plaintiffs acknowledge the habeas petitions were
28 unsuccessful. See Hereford v. Neven, Case No. 2:14-cv-01390-JAD-CWH, Docket No. 13 (D.

1 Nev. Aug. 27, 2015) (dismissing habeas petition with prejudice); Braunstein v. Neven, Case No.
2 2:15-cv-00947-RFB-NJK, Docket No. 13 (D. Nev. Feb. 5, 2016) (dismissing fourth attempted
3 habeas petition with prejudice). Plaintiffs now seek to challenge their convictions and confinement
4 in this litigation. Plaintiffs attempt to attack their confinement through § 1983 in this case is barred
5 by Wilkinson. 544 U.S. at 81-82.

6 **IT IS THEREFORE ORDERED** that this case is DISMISSED with prejudice.

7 **IT IS FURTHER ORDERED** that Plaintiffs' Motion for Leave to Proceed In Forma
8 Pauperis [ECF No. 1] is DENIED as moot.

9 **IT IS FURTHER ORDERED** that the Clerk of the Court shall close this matter
10 accordingly.

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DATED: September 30, 2018.

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RICHARD F. BOULWARE, II
UNITED STATES DISTRICT JUDGE